COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	)	D.T.E. 01-20

VERIZON MASSACHUSETTS' REPLY TO THE MOTIONS FOR RECONSIDERATION AND CLARIFICATION FILED BY AT&T, WORLDCOM, THE CLEC COALITION, AND Z-TEL

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INTRODUCTION

Predictably, the CLECs argue that the sky will fall if this Department does not reduce even further the unbundled network element ("UNE") rates adopted in the *Order*. They utterly fail, however, to show that the Department's findings with which they disagree contain errors of law or fact. Indeed, the CLECs' motions for reconsideration generally contain merely the same recycled and repackaged arguments that the Department has already rejected. Reconsideration is appropriate only when circumstances require that the Department take a fresh look at the record because of "previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered" or because the Department's disposition of an issue "was the product of mistake or inadvertence." Verizon MA Motion at 3 (citing Phase 4-M Order, *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, at 4-5 (June 16, 1999) ("*Phase 4-M Order*")). The CLECs clearly fail to meet that standard here.

Ultimately, the CLECs' motions for reconsideration lack merit not only because they are premised on an extreme and incorrect interpretation of TELRIC and FCC regulations, but also because their arguments consistently fail to grapple with the evidence and with the standards for seeking reconsideration of Department orders. And in some instances, the CLECs advocate, under the guise of seeking reconsideration, new proposals never even presented in the proceeding below, such as a UNE-specific cost of capital, and a 75 percent reduction to Verizon MA's collocation Administration and Engineering charge. These new proposals are not only wholly improper at this late stage, but fail because they are entirely inconsistent with clear Department findings and lack any support in the record. At bottom, the CLECs' non-subtle message is that lower rates should prevail, notwithstanding the niceties of evidence and the Department's standards for seeking reconsideration. As discussed further below, the Department should deny the CLECs' motions for reconsideration.

ARGUMENT

I. THE DEPARTMENT SHOULD DENY AT&T'S AND WORLDCOM'S MOTIONS TO RECONSIDER AND REDUCE VERIZON MA'S COST OF CAPITAL.

After hearing all the evidence submitted by the parties to this proceeding, the Department adopted a cost of capital of 11.45 percent, finding that it "accurately reflects the forward-looking risk of investment for Verizon in Massachusetts in 2002 for TELRIC purposes under competitive conditions created by the 1996 Act." *Order* at 79. Although the record establishes that the risks Verizon MA faces in Massachusetts warrant a cost of capital substantially higher than the Department approved, the Department was correct to reject AT&T/WorldCom's flawed analysis and the drastically low cost of capital they proposed. In its Motion for Reconsideration, AT&T claims that the Department should reduce its cost of capital determination to 9.56 percent ? a figure virtually identical to the 9.54 percent it proposed the first time around. WorldCom suggests not only that the Department should reduce the cost of capital, but also claims for the first time in this proceeding and without any supporting evidence in the record that the Department should adopt element-specific costs of capital. The arguments AT&T and WorldCom make in support of their reconsideration requests are no more legitimate than their arguments in support of their original cost of capital proposal, and demonstrate a complete failure to acknowledge the risks Verizon MA faces in providing UNEs in Massachusetts. Accordingly, the Department should reject AT&T's and WorldCom's motions to reconsider the cost of capital.

A. The Department Properly Found That Verizon MA Faces Significant Competitive Risk.

1. The Evidence Supports the Department's Finding.

The Department based its 11.45 percent cost of capital decision on the determination, among other things, that "network-based competition in Massachusetts is underway and will intensify in the future," posing significant risk to Verizon MA's UNE facilities. *Order* at 80. AT&T and WorldCom fail to refute the overwhelming evidence on the record demonstrating the significant facilities-based competition that Verizon MA already faces and will continue to face, to an even larger degree, in the future. As the Department concluded, "Verizon has provided sufficient evidence that it faces significant actual and potential competition from facilities-based CLECs and from alternative-technologies providers, including data providers, cable operators, and wireless carriers, and that this competition is likely to increase in the next few years." *Order* at 72-73 (citation omitted).

Although WorldCom contends that the Department incorrectly evaluated the evidence regarding competition in Massachusetts, its argument not only fails to meet the standard for review of Department orders,[1/] but also is simply wrong. WorldCom claims that the Department based its findings on historical competition data,[2/] and had no basis to "rationally conclude . . . that there is a 'trend' on which a high level of forward-looking risk can reasonably be based." WorldCom Motion at 7. Yet the evidence on the record clearly demonstrates otherwise. For

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1/ *See Phase 4-M Order* at 5 (motions for reconsideration should not reargue issues considered and decided).

2/ WorldCom also disputes the actual data the Department considered, arguing that CLECs have less fiber than Verizon MA has deployed and do not all have interconnection agreements with Verizon MA. But, among other things, whether or not CLECs yet have as much fiber as Verizon does, the fact is that there is a significant ? and increasing ? degree of real competition in the Massachusetts market.

example, while WorldCom seems to suggest that competition peaked in 1999 and has since steadily declined, WorldCom Motion at 9, the fact is that from December 1999 through December 2001, the number of lines served in part or fully by CLEC-owned facilities steadily *increased*. RR-DTE 3. As the Department recognized, CLECs have deployed increasing amounts of fiber and local switches throughout the state, and alternatives that completely bypass Verizon MA's facilities, such as wireless service, continue to gain popularity. *Order* at 71; RR-DTE-1(c); Exh. VZ-3 at 29.

WorldCom claims, however, that growth is slowing or "reversing outright," WorldCom Motion at 9, pointing to the recent economic decline of the telecommunications industry, the termination of some collocation requests, and Verizon MA's long distance authority as indications that competitive inroads in Massachusetts will deteriorate. Yet to the extent WorldCom's concerns are even remotely legitimate, the Department has already taken them into account by tempering the degree to which it predicted future competitive growth. *See Order* at 78 (noting that "the investment climate for telecommunications companies today and into the future suggests that network-based competition may be held back somewhat by constraints on the availability of capital"). And in any event, WorldCom's pessimistic view of competition is significantly overblown. Massachusetts has a significant amount of facilities-based competition that bypasses Verizon MA's facilities entirely or only depends partially on Verizon MA UNEs. *See Order* at 71; *see also id*. at 70 (noting that "bypass occurs when CLECs serve customers primarily using the CLECs' own facilities"). And, contrary to WorldCom's contention, the number of collocation terminations says nothing about this facilities-based competition. *See* WorldCom Motion at 9. Moreover, the fact that some CLECs cancel their collocation arrangements does not mean that other CLECs, who maintain their collocation arrangements, or who have their own facilities, are not capturing those existing CLECs' customers.

More generally, while many smaller CLECs have experienced financial difficulties, this simply creates churn in the industry, with the customers of failed CLECs as fair game for more financially stable or long-term players in the market. And market analysts have in fact predicted that many of the CLECs in bankruptcy are likely to emerge significantly stronger after restructuring their debt.[3/] Indeed, many of these CLECs have a significant customer base, which they continue to serve during bankruptcy: for example, WorldCom in particular has assured its customers continued service during its bankruptcy restructuring.[4/] Post-bankruptcy, CLECs will have improved balance sheets and customers that will once again attract capital investment. Indeed, it is likely that after the financial shake up is complete, the remaining CLECs will be even more vital and aggressive competitors in the marketplace.

Thus, contrary to WorldCom's portrayal of the market, Verizon MA's actual line count has declined, indicating that it continues to lose customers to CLECs, a trend verified by the record evidence establishing that the number of lines served in part or fully by CLEC-owned facilities has been increasing.[5/] Indeed, Verizon's stock was recently downgraded from buy to

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3/ *See* Dennis K. Berman, H. Asher Bolande and Almar Latour, *A Global Journal Report: Telecom Glut Could Linger as Failed Networks Are Rescued*, Wall St. J., Aug. 14, 2002, at B1 (noting that "[a]s struggling companies are bailed out, and the massive debt they incurred to build their lines is wiped away, they 'are in a much stronger position to compete on pricing'").

4/ On the day after WorldCom filed its bankruptcy petition, its president and chief executive officer stated that bankruptcy restructuring "will enable WorldCom to continue operating without interruption and continue to provide service to our customers." WorldCom Press Release, July 22, 2002, accessible at http://www1.WorldCom.com/infodesk/news/news.xml? newsid=3750&mode=long&lang=en.

5/ *See* Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of December 31, 2001*, accessible at www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0702.pdf (July 2002) ("*2002 Local Telephone Competition Report*") at Tables 1 & 4; RR-DTE 3.

hold because of concerns that its local service business is eroding due to competition from CLECs and fixed costs that do not decrease when customers are lost.[6/] Although WorldCom claims that Verizon MA's long distance authorization somehow signals the end of competition in Massachusetts, *see* WorldCom Motion at 8, it points to no record evidence in support of its claim. To the contrary, analysis of competition in states where the BOC has received section 271 authorization indicates that competition tends to *increase* after section 271 approval.[7/] Post-section 271 authorization, CLECs are often compelled to offer local service in order to offer bundled services similar to those offered by the BOC. For example, in Massachusetts, WorldCom recently (over one year *after* Verizon MA obtained 271 authority) launched its "Neighborhood Built by MCI" program, which bundles local and long-distance services.

Finally, of course, AT&T and WorldCom's position is wrong because TELRIC requires that the Department assume a fully competitive market for UNEs when assessing the cost of capital: the Department has always understood this requirement, as has the FCC.[8/] In the *Order*, the Department again rejected AT&T and WorldCom's attempt to argue otherwise, recognizing

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6/ Jane Black, *The Bells' Big Local Headache*, Business Week Online, Aug. 21, 2002.

7/ *See* News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition*, 2001 WL 536890 (F.C.C.), May 21, 2001 (noting that "CLEC market share in New York and Texas ... [is] over 135 percent and 45 percent higher than the national average, respectively"); *2002 Local Telephone Competition Report* at Table 6 (demonstrating CLEC market share had increased in New York 140 percent and in Texas to more than 55 percent higher than the national average).

8/ Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4 at 7 (Dec. 4, 1996) ("*Phase 4 Order*") ("Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market."); Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, 16 FCC Rcd 8988 ¶ 42 (2001) ("*Massachusetts 271 Order*") (The goal of "[e]fficient entry simply means that competitors seeking entry will face the same sorts of costs they would face in a fully competitive market, that is, TELRIC-based UNE rates."); First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 738 (1996) ("*Local Competition Order*") ("In this proceeding, we are establishing pricing rules that would produce rates for monopoly elements and services that

that TELRIC "'simulates the conditions in a competitive marketplace.'" *Order* at 69 (quoting *Local Competition Order* ¶ 679). For this specific reason, the Department correctly found that AT&T and WorldCom's proposed proxy group was unacceptable because its "telephone holding companies . . . can diversify away many of the technology risks that Verizon faces in a competitive local exchange market," and approved Verizon MA's recommended proxy group. *Order* at 72.

2. Risk Relevant to the Forward-Looking Cost of Capital.

AT&T and WorldCom next suggest that the only real risk relevant to Verizon MA's cost of capital is the risk of stranded investment. AT&T Motion at 1-2 (urging the Department to "reconsider how much the cost of [capital is] . . . increased to reflect assumptions about the extent to which competition in the retail market could result in stranded investment"); WorldCom Motion at 11 (pointing to "the possible abandonment of facilities" as "the very risk the Department identifies as the reason for its high ROE"). Having erected this straw man, AT&T and WorldCom then proceed to try, albeit unsuccessfully, to knock it down.

AT&T and WorldCom's approach is wrong for several reasons. The risk of stranded investment is *not* the sole risk that the Department considered, or should consider, when assessing the TELRIC cost of capital. As the FCC has explained to the Supreme Court, the cost of capital must "take[] into account not only existing competitive risks . . . but also risks associated with the regulatory regime to which a firm is subject." Exh. VZ-55 at 12 n.8. Such regulatory risks are inherent in the TELRIC regime. For example, Verizon MA must price UNEs based on the assumption of a reconstructed network using today's most efficient technologies even though it will never actually build such a network, obtaining a significantly

approximate what the incumbent LECs would be able to charge if there were a competitive market for such offerings.").

reduced return on its capital than it otherwise would ? and none of Verizon MA's competitors is saddled with this same requirement. Moreover, those prices will be re-set every few years based on the assumption of yet another all-new network using the then-most efficient technologies. That regulatory regime only exacerbates a further risk that the cost of capital must take into account ? the risk of unanticipated technological advances that render today's facilities inefficient or even obsolete, a risk that is very real today, given the leaps and bounds by which technology has advanced in recent years.

In addition, Verizon MA faces the risk unique to providing UNEs that it must make large sunk investments in its network, in part for CLECs, and then faces the risk that CLECs, who lease UNEs on a monthly basis, may abandon those facilities. In essence, Verizon MA is making investments and incurring costs so that its competitors can temporarily use those facilities to attract customers while building their own facilities and then move that customer traffic off of Verizon MA's network. This regime poses the significant risks that actual demand could be significantly different from anticipated demand. *See* Exh. VZ-5 at 17-18. This in turn exacerbates the risk of stranded investment that *all* competitors face in the marketplace as a result of the churn of competition.

AT&T ignores most of these risks and attempts to discredit the Department's cost of capital by suggesting that Verizon MA failed to demonstrate *any* risk of stranded investment. AT&T bases this argument on the fact that Verizon MA's switching cost study forecasts a 1.5 percent annual line growth, and that the Department should therefore "expect Verizon's facilities to remain in use serving both Verizon's retail customers and its wholesale demand." AT&T Motion at 5. Even though this figure was in the record, AT&T did even not raise this argument during the prior phase of this proceeding. Because motions for reconsideration are not an opportunity to present entirely new arguments, AT&T should be foreclosed from raising this argument now.

Even leaving aside the impropriety of AT&T's raising this new argument, the fact is that the 1.5 percent line growth assumption in Verizon MA's study does not in any way undercut the risk of stranded investment. Even if lines might grow overall, that does not mean that lines will grow in all parts of the network. Rather, it is far more likely that in some areas, lines will increase, while in others, CLECs will capture more customers or customers will opt for wireless or other facilities, and Verizon MA will be left with stranded investment in these areas. Indeed, even when the number of lines is increasing, customer churn creates stranded investment which produces costs associated with unused capacity.

Furthermore, stranded investment is not simply the result of lower demand. Stranded investment may be a result of other changes such as technological development: for example, if fiber-to-the-home becomes a reality, copper facilities could become defunct. Finally, certain facilities, such as dedicated transport, have no relationship to access line growth at all; Verizon MA's line growth could be increasing dramatically, but Verizon MA could still be experiencing stranded dedicated transport facilities.

AT&T next claims that the Department "fully compensated" Verizon MA for any risk of stranded investment in its distribution fill factor and depreciation rates. AT&T Motion at 6-7. But this argument is erroneous. First, networks fill accounts for the amount of spare capacity that must be available for the network to function properly and efficiently: the spare capacity accordingly is not *stranded* capacity. For the fill factor to account for the permanent or long-term loss of customer that creates *stranded* capacity, it would have to be adjusted significantly downward. Verizon MA accordingly proposed an adjustment of 10 percent to the distribution fill, as AT&T points out. AT&T Motion at 6. However, the Department rejected that adjustment, and allowed a reduction of only 3 percent. *See Order* at 185. Accordingly, the fill factor does not fully account for the loss of stranded investment. And even if the 3 percent adjustment *were* sufficient, it adjusts the fill for *only* the distribution facilities, which are part of the loop. Thus, it does not account even for all the risks associated with loops, let alone all the other types of network facilities. And even WorldCom concedes that the risk of stranded investment is actually far *larger* for plant *other* than loop plant. *See* WorldCom Motion at 11-12. Since no identical adjustment is made to the fill for other facilities, that risk *must* be reflected in the cost of capital.

Similarly, AT&T mistakenly concludes that risks associated with competition and technological change can be accounted for in either cost of capital or depreciation lives, but not both. AT&T Motion at 7. Accounting for technological change and competition in estimating the forward-looking lives of Verizon MA's assets does not ? and cannot ? perform the same function as determining a forward-looking cost of capital that accounts for the risks of a fully competitive market. Indeed, depreciation lives are designed to estimate the *expected* time period over which network assets will produce economic benefit to Verizon MA. Verizon MA Brief at 27. But the cost of capital is designed to capture, among other things, the risks of unanticipated technological change, and unanticipated changes in demand. *See* Exh. VZ-5 at 17-18.

B. The Department Should Reject AT&T's Proposed 9.56 Percent Cost of Capital.

The Department should reject out of hand AT&T's newly proposed 9.56 percent cost of capital. Like its earlier 9.54 percent proposal on the record, this newest proposal is improperly based on the monopoly market assumption that the Department properly rejected after full consideration. The starting point for AT&T's analysis, presented for the first time in its Motion, is the 9.73 percent cost of capital that the Department estimated in 1995 for Verizon MA's *retail* services. AT&T Motion at 8. But that calculation was based on historical costs and a monopoly assumption under rate of return regulation. The Department properly recognized its "analysis of cost of capital in the 1995 case was specifically predicated on the assumption that we were evaluating a retail monopoly ? not a competitive retail market." *Order* at 79. The Department specifically contrasted this assumption with "the forward-looking risk of investment in Verizon in Massachusetts in 2002 for TELRIC purposes under the competitive conditions created by the 1996 Act." *Id*. Indeed, as the Supreme Court explained, TELRIC "specifically permits more favorable allowances for costs of capital and depreciation than were generally allowed under traditional ratemaking practice." *Verizon v. FCC*, 122 S. Ct. 1646, 1677 (2002). Therefore, AT&T's assertion that 9.56 percent (the result of a reduction from 9.73) is "the appropriate starting point" for a cost of capital determination flatly defies the central competitive market assumption of TELRIC. Furthermore, this "starting point" belies the FCC's determination dating back to the *Local Competition Order,* recently reaffirmed by the Supreme Court, that the appropriate starting place for the forward-looking cost of capital is 11.25 percent. *Local Competition Order* ¶ 702. Indeed, the Department's 11.45 percent cost of capital is nearly identical to the starting point approved by the FCC and the Supreme Court and well within the Department's discretion to "adjust[] [the cost of capital] *upward* [from 11.25 percent] if the incumbents demonstrate the need." *Id.* (emphasis added).

In support of its proposal, AT&T resorts only to the same arguments it presented to the Department regarding proxy group and choice of model that the Department has already evaluated. The Department correctly agreed with Verizon MA that AT&T and WorldCom's proposed proxy group "does not represent Verizon's going forward wholesale business risk, whereas the S&P Industrials do represent that risk because they represent the risks of competitive organizations, against which it is reasonable to compare the likely risk of building and leasing UNEs." *Order* at 73. AT&T has presented no arguments warranting reexamination of this issue, and certainly has not shown that the Department's decision is the product of mistake or inadvertence. Although AT&T attempts to minimize the impact of the Department's adoption of Verizon MA's proxy group, this selection correctly led the Department to approve a capital structure of 25 percent debt and 75 percent equity. *Order* at 73-74. Only the return on equity was altered from Verizon MA's proposed analysis, and AT&T has failed to demonstrate that further reconsideration is warranted.

C. WorldCom Has Provided No Basis for the Department To Determine a Lower Cost of Capital for Loops.

WorldCom argues, for the first time in this proceeding, and without providing any supporting evidence, that the Department should adopt a lower cost of capital for loops alone. To seriously consider WorldCom's proposal would require an entirely new investigation and the submission of new analysis and evidence. No party in this proceeding previously suggested that the Department should not adopt a uniform cost of capital for all UNEs, and certainly the time for such proposals has now expired. Furthermore, WorldCom makes no attempt to address the impact of its proposal. It would certainly be inappropriate, especially at this late date, to pick out a single UNE and adopt a lower cost of capital for that UNE, without then examining whether other UNEs present a higher than average risk and therefore warrant a cost of capital that is *higher* than what the Department determined.

In any event, WorldCom's argument that the cost of capital for the loop should be extremely low is based again on the faulty assumption that the cost of capital is driven entirely by the risk of stranded investment, which simply is not the case, as explained above. Nor is

WorldCom correct that Verizon MA faces "zero" risk in providing unbundled loops. Even if, as WorldCom would have it, the Department's three percent adjustment to Verizon MA's distribution fill could appropriately account for the loss to competitors with respect to distribution facilities, this would not mean the risk of stranded loop plant on the whole would be zero. *See* WorldCom Motion at 11. The loop consists of more than distribution facilities, an adjustment to distribution fill does not account for the risk of stranded fiber feeder, for example. Moreover, WorldCom is incorrect in its assertion that there is no evidence of loop bypass on the record. The Department specifically found, based on cited record evidence, that alternative technologies such as wireless and cable services bypass all of Verizon MA's facilities, including the local loop. *See Order* at 72-73 and record evidence cited therein. As noted above, the loop is by no means immune to technological risk, as CATV networks, fiber-to-the-home and similar technologies may ultimately render a significant degree of existing loop plant defunct.

II. AT&T'S ARGUMENT THAT THE DEPARTMENT'S NEW SWITCH DISCOUNT IS TOO LOW IS COMPLETELY UNFOUNDED.

Although the Department has established a switch discount level substantially above that proposed by Verizon MA and substantially above the discount level that Verizon MA could ever expect to realize in a forward-looking environment, AT&T was disappointed that the Department did not base its switch discount decision on the bid prices shown in the excerpt it selected. *See* AT&T Motion at 17-22; *see also* RR-DTE-49-2-S (specifically, RR VZ-VA-32) (cited by *Order* at 305). In requesting that the Department reconsider its decision with respect to the level of the switch discounts, AT&T misrepresents both the basis for the Department's decision and Verizon MA's argument in its Reply Brief.

The Department cites two independently sufficient reasons for rejecting the discount levels reflected in RR-DTE-49-S as forming the basis for the new switch discount to be set in this proceeding. First, the Department was "persuaded by Verizon that it would be inappropriate to rely on the information provided in RR-DTE-49-S because the discount that AT&T recommends is not the effective overall discount achieved in the bid." *Order* at 306. Second, the Department was persuaded by Verizon MA's explanation that "the bid result cannot be used as the basis for a forward-looking valuation of Verizon entire local switching investment. (Verizon MA Reply Brief at 68)." *Id.* at 307. The Department noted that "[a]lthough the evidence suggests that the competitive bidding process might yield a lower price than the contract price that Verizon incorporates in its TELRIC filing, there is not a sufficient record to support this conclusion." *Id.* (citations omitted).

In its Motion, AT&T ignores entirely the second reason referenced by the Department, *i.e.*, that a few selected "bid result[s] cannot be used as the basis for a forward-looking valuation of Verizon MA's entire local switching investment." *Id.* The Verizon MA argument in its Reply Brief to which the Department specifically referred was as follows:

> *More fundamentally*, the analysis of this bid sheet demonstrates that the bid result cannot be used as the basis for a forward-looking valuation of Verizon MA's entire local switching investment. No rational vendor would provide such a discount on the massive volume of equipment that would be required to satisfy the entire increment of demand in Massachusetts. These isolated bids portray the behavior of suppliers at the very end of a product life cycle, having already recovered development costs, and battling to win the last few additions to the base of switches that form the market for incremental growth sales. To suggest that *this* behavior would persist in a market where hundreds of new switches were being purchased defies all rational market principles.

Verizon MA Reply Brief at 68 (emphasis added). This argument, as Verizon MA emphasized at the beginning of the paragraph, is the most "fundamental" argument for rejecting these isolated bid documents. The Department accepted Verizon MA's argument, and AT&T ignores that fact.

Plainly, as the Department found, the notion that such a high discount could be used as a basis for new switch discounts in the forward-looking environment is not compatible with forward-looking valuation. No switch vendor could possibly stay in business selling switches at such a low price. Indeed, AT&T/WorldCom witness Pitts, when she specifically revealed her awareness of the competitive bidding information at the hearing, noted that there were "requests for proposal data where they competitively bid new switches, and they do actually achieve a better discount than [AT&T's proposed discount]. But we decided -- and I think I mentioned it in my testimony -- just as a conservative measure, we just left that number as is, rather than arguing over another number." Tr. 11 at 2061-2062 (cited in the *Order* at 307).

AT&T isolates a single switch bid by Nortel, to be located in Eastwick, PA, and represents it to be "the price [Verizon MA] *actually pays* for new Nortel switches." AT&T Motion at 20 (emphasis added). But there is no reason to believe that a discount on an isolated bid for a single switch is the price Verizon would pay for all new Nortel switches — as noted above, Nortel (or any other manufacturer) could not survive if that were the case. In addition, the discount Verizon receives at the end of the life cycle for digital switches is not representative of the overall discount: the suppliers' incremental manufacturing costs were at this point extremely low, since all research and development has long since been recovered by those suppliers. Moreover, suppliers doubtless had a great deal of inventory from cancellations they had received due to turbulence in the industry.

Accordingly, these few bids cannot form a basis for setting the forward-looking cost of switching. AT&T's assertion to the contrary is predicated on the unsupported assumption that the Nortel bid is typical. The assumption is wrong. Witness Pitts' determination ? voiced at the hearings ? *not* to consider some few competitive bids in her analysis in effect recognizes that such isolated discounts are not representative and cannot form the basis for a forward-looking analysis. In sum, AT&T has no grounds whatsoever for alleging that these isolated switch discounts referenced in RR-DTE-49-S reflect "what Verizon pays" for Nortel switches. *See* Verizon MA Reply Brief at 62-68.

Verizon MA's figure of $36.00 per line, referred to in its Reply Brief, *see* Verizon MA Reply Brief at 67, mischaracterized by AT&T as "what Verizon pays," while it adds both non-Nortel supplied hardware and certain one time bid adjustments to the *supposed* extremely high overall discount, does *not* reflect loadings such as power, MDF and, particularly, EF&I. Indeed, the EF&I factor, which is ordinarily expressed as a *percentage* of the material switch investment, would be *considerably* higher as applied to this unusually heavily discounted single switch, because the material investment (the denominator of the fraction) is so much lower in these bids. Nor, of course, does the $36.00 figure in any way reflect the specific idiosyncrasies of the Nortel bid that combined in this case to produce such an egregious discount. These points were made clearly by Verizon MA in its Reply Brief, and it is hardly likely, as AT&T pretends, that the Department misunderstood them.

AT&T makes the *additional* reargument that the Lucent new switch price discount must reflect the "reduction" in the Nortel new switch price discount. AT&T Motion at 21-22. For the reasons set forth above, there should be no such "reduction" in the Nortel price. In addition, the argument that all vendors' switch discount prices must be reflective of the greatest discount is not supported in logic or the record. AT&T offers no evidence that Lucent switches are available at any such differentially lower price. Moreover, AT&T's argument ignores the fact that — particularly at the end of a life cycle — different vendors have different needs in terms of growth capacity, incremental manufacturing costs, research and development history, and inventory pressures. Nor does AT&T's argument take into account the strategic diversity requirements of Verizon MA, *i.e.*, that an approximately 57:43 mix of Lucent and Nortel switches protects Verizon MA from the effects of strike, bankruptcy or other factors that could impair the activities of one vendor or another. The mix also helps to insure that neither vendor will engage in unreasonable or non-competitive licensing practices. Indeed, the main reason that Verizon MA realizes the switch discounts it does is the fact that Verizon MA has been successful in positioning one switch vendor against the other. *See* Verizon MA Reply Brief at 56-57.

Moreover, strategic diversity encompasses factors other than price. Provisioning intervals, for example, can be as critical as cost and meeting customer requirements. Full strategic diversity encourages competition in these non-price areas as well. Competitive situations result in vendors that are more responsive to their customer needs and strive to maintain high quality standards. And, most obviously, Verizon MA simply cannot place itself at the mercy of a single supplier for such a vital network component as a switch. The Department has already consented to and approved the use of more than one vendor in the efficient, forward-looking network. *Order* at 304. That determination should not be changed.

Accordingly, AT&T's reargument on this point should be dismissed.

III. THE CLECS' BASELESS ATTACKS ON THE DEPARTMENT'S LOOP FINDINGS SHOULD BE REJECTED.

A. WorldCom's Argument That UDLC Is Not Required in a Forward-Looking Network Under TELRIC Principles Is Without Merit.

1. TELRIC Requires the Use of Technology That Is "Currently Available."

WorldCom argues that the Department erroneously interpreted the FCC's *Local Competition Order* to require inclusion in a TELRIC network of only technologies that are currently being deployed by the incumbent carrier. WorldCom's convoluted attempt to read the

Local Competition Order to mean that TELRIC does not require the use of technology that is currently being deployed should be rejected. All parties agree that the TELRIC pricing rules and paragraph 685 of the *Local Competition Order* govern the technology to be employed in the network. The FCC's pricing rules provide that TELRIC "should be measured based on the use of the most efficient telecommunications technology currently available." 47 C.F.R. 41.404(b)(1). Similarly, the *Local Competition Order*, in pertinent part, reads as follows:

> Under the third approach, prices for interconnection and access to unbundled elements would be developed from a forward-looking economic cost methodology based on the most efficient technology deployed in the incumbent LEC's current wire center locations.

Local Competition Order ¶ 685.

WorldCom, in an exercise of cerebral gymnastics grounded neither in language nor in common sense, would have the Department believe that the word "deployed" as used in paragraph 685 really means "theoretically deployable" at some point in the future. WorldCom Motion at 19. More important, WorldCom simply ignores the plain language of the TELRIC rules — and the Supreme Court's decision affirming those rules — that the technology in a TELRIC study must be "currently available."[9/] The record in this proceeding is substantial and crystal clear: IDLC with a GR-303 interface cannot at this time be used — and thus *is* not being used anywhere — to provision unbundled loops at the DS0 level. *Order* at 144-145; Verizon MA Brief at 73-79; Verizon MA Reply Brief at 96-106. Accordingly, the Department should affirm its finding that GR-303 "is not a TELRIC-compliant technology upon which to base UNE rates." *Order* at 144-145.

[9/] When affirming the FCC's TELRIC pricing rules, the Supreme Court expressly found that TELRIC requires the use of technology that is "currently available," *i.e.*, technology that has been built and is in use. *Verizon*, 122 S. Ct. at 1670.

By its own terms, WorldCom's argument that IDLC via GR-303 is the "most efficient technology" for purposes of determining TELRIC compliance is predicated upon its unique interpretation of *Local Competition Order* ¶ 685. WorldCom Motion at 19. The remainder of WorldCom's argument on this point is in fact reargument, and accordingly does not meet the Department's standard for granting a motion for reconsideration. *See* Verizon MA Motion at 3-4.

As the Department found, the term "technically feasible" refers to "operational" as well as "technological" concerns. *Order* at 155 (citing *Local Competition Order* ¶ 198). Indeed, 47 C.F.R. § 51.505(b)(1) provides that costs should be measured "based on the use of the most efficient telecommunications technology currently *available*" (emphasis added) makes it clear that the technology must be operationally as well as theoretically possible. Since all parties agree that GR-303 is used *nowhere* in the country to unbundle loops at the DSO level, it is beyond question that there are operational concerns with respect to GR-303. Moreover, as the Department properly found, *the technology that has been proposed to solve GR-303's unbundling capability* at the DSO level has "unresolved technical issues as well as operational issues . . . ." *Order* at 155.

The most succinct exposition for this point was made by Verizon MA witness Gansert at the hearing:

> The real question is, is the equipment available and the software available that can support the kind of environment that's needed for unbundled loops, and that environment requires additional capabilities and in terms of security, administration, testing, many other functions.
>
> The simple answer is that the equipment is not available and has not been developed. I know, I think, another witness in this case -- I forget who it is, but somebody had a whole bunch of 1998 papers about this. One doesn't have to look at 1998 papers. Go to the Websites of the suppliers. If they had software and

> equipment that was supporting this, you can be guaranteed that they wouldn't keep it secret. They're in the business of selling it.
>
> The simple fact of the matter is, the equipment is not available. It requires modifications and developments in both the switching equipment -- in fact, mostly in the switching equipment -- and in the loop equipment, since they have to interact, and in operations systems. And these technologies do not exist today. It's not that they couldn't possibly exist; it's that they don't exist.

Tr. 17 at 3527-28.

The remainder of WorldCom's Motion on this point is simply a recycling of what it previously argued, which the Department rejected. Its argument with respect to the 1999 letter from Alcatel, WorldCom Motion at 22, is merely an extended quibble about the meaning of "currently available." The Alcatel letter states that the company has "successfully demonstrated the operation of multiple VIGs for a single carrier. However, operating GR-303 in a multi-carrier, multiple VIG environment introduces a number of significant additional challenges to the industry *that still must be solved*." Exh. VZ-18, Attachment A (emphasis added). Similarly, a "white paper" drafted by MCI and relied upon by the CLEC Coalition, Exh. CC-3, Attachment 3, acknowledges that the "technical issues and challenges of implementing GR-303" IDLC systems still have not been resolved. *See also* Tr. 17 at 3527.

WorldCom also argues that the voluminous testimony of Verizon MA witnesses with respect to technical infeasibility should not be believed, because its witnesses "have an interest in the outcome of this case." WorldCom Motion at 22. WorldCom's attempt to discredit Verizon MA's testimony in this regard is mystifying; were it true, no testimony in this case should be considered by the Department because all parties have an interest. Finally, Verizon MA witness Joseph Gansert, far from showing the technical feasibility of GR-303 as WorldCom implies, WorldCom Motion at 22, was clear that even the Telcordia documents relied upon by AT&T/WorldCom witness Donovan, although optimistic about the technical feasibility of unbundling GR-303, are only in the "idea" stage ? ideas Telcordia in fact got from Verizon — and therefore speculative as to future "availability." Tr. 17 at 3527.

2. WorldCom's Argument That UDLC Is Not Needed for Other Purposes in the Forward-Looking Network Has No Basis in Fact.

The Department properly found that UDLC is a necessity in the forward-looking network. The Department found that, in addition to the essential purpose of providing connection for unbundled loops, (1) UDLC is used in areas that have unknown service requirements; (2) UDLC is used for services that cannot be integrated, such as non-switched services; and (3) that, because no RT should be fully integrated, the optimum ratio of IDLC to UDLC is RT-site dependent. *Order* at 158.

In its reargument of this issue, WorldCom does not even address (1) or (3). With respect to (2), WorldCom simply asserts that "non-switched services use loop plant in the same manner as unbundled loops." WorldCom Motion at 23. WorldCom is again quibbling; whether or not another "functionality" is entailed, non-switched services represent another essential use within the network for UDLC.

WorldCom cites to the Bell Atlantic Network Planning Guide, Exh. WC-VZ-3-1 (Bell Atlantic Network Planning Guide) (NP-G-97-027, April, 1999), in an apparent effort to show that IDLC can be substituted for UDLC with respect to non-switched services. WorldCom's reference to this document, however, concerns only a subset of non-switched services, *i.e.*, those circuits interfacing the IOF networks in large volumes. WorldCom Motion at 23-24. Moreover, the configuration described in this document is entirely hypothetical and has not been deployed in the Verizon network.

In addition, WorldCom argues that the document cited by the Department in support of its conclusion about the necessity of UDLC for other purposes was misread by the Department and "actually undermines" that conclusion. WorldCom Motion at 24. WorldCom cites Verizon's "Outside Plant Engineering Guidelines" once again solely with reference to non-switched *specials* and not non-switched services generally. Exh. ATT-VZ 3-5 at 49. AT&T also quotes the discussion in that document of future planning, Exh. ATT-VZ 3-5 at 54, as though what Verizon MA was planning was already deliverable. Yet the Guidelines clearly make equipment planning and ordering dependent upon "specific engineering methods and procedures" which will be issued in the future, *i.e.*, "once the draft document has been approved." There is nothing in the Guidelines that suggests that IDLC generally or GR-303 specifically can now replace UDLC for the bulk of non-switched services. Indeed, the document states unequivocally:

> UDLC is deployed where the types of services to be provided by the system cannot be integrated such as non-switched services and unbundled loops.

Id. at 16.

This fact was made crystal clear by Verizon MA witness Joseph Gansert, who stated at the hearing:

> In the forward model proposed by either party, any of the parties, there are customers that are served on copper feeder and there are customers that are served on DLC. If you define any kind of circuit that goes from one of those customers to the other -- for example, a common private line -- without a UDLC arrangement, there is no feasible physical way to connect those two together, and there is no technology that could solve that problem. You can't connect the two-wire copper feeder pair to a DLC except through a universal digital-loop carrier.
>
> So that says no practical network can exist without UDLC circuits, and indeed, every DLC RT we provide, we always provide universal shelves on them.

Tr. 9 at 1852. In short, contrary to WorldCom's reargument, the bulk of non-switched services require UDLC: UDLC is required at remote terminals and UDLC must be used in areas that have unknown service requirements. *Order* at 158. The Department's determination is clearly based on substantial record evidence which it correctly interpreted and applied.

B. AT&T's Plea to the Department To Reduce the UDLC Percentage of Feeder Loops in the Forward-Looking Network to Approximately 8.8 Percent Is Without Support in the Record.

The loop plant technology mix in the Verizon MA existing network is approximately 80 percent copper, 13.3 percent IDLC, and 6.7 percent UDLC. *Order* at 158. In its forward-looking cost study, Verizon MA proposed a technology mix of 20 percent copper, 25 percent IDLC, and 55 percent UDLC. *Order* at 158-59. After considering the testimony of the parties and evaluating Verizon MA's cost study, the AT&T sponsored HAI Model, and the testimony, the Department found the appropriate forward-looking technology mix to be assumed in Verizon MA's compliance filing to be 41.2 percent copper, 39.2 percent IDLC, and 19.6 percent UDLC. *Order* at 160.

The Department found that, "[g]iven the fact that there is a higher proportion of fiber and IDLC in a forward-looking network than in the existing network, and UDLC is used for purposes other than provisioning unbundled loops . . . the UDLC proportion in a forward-looking network may be higher than in the existing network." *Order* at 159. Nonetheless, the Department *reduced* Verizon MA's proposed UDLC level by nearly 65 percent. It found in effect that its significant reduction in the percentage of copper feeder loops (80 percent to 41.2 percent) should be replaced by DLC at an IDLC/UDLC ratio of 2:1, because IDLC is the "least cost" technology. Thus, the Department effectively *increased* the percentage of IDLC in the forward-looking network by approximately 180 percent.

AT&T seeks to reargue the loop technology mix approved by the Department by concocting a claim that the Department "shift[ed] the burden of proof" on this issue from Verizon MA to AT&T. AT&T Motion at 12-13. The Department did no such thing. The

Department considered all the evidence offered on this point and concluded that UDLC is needed for numerous purposes within the network — not only unbundled loops, but non-switched services, areas that have unknown requirements, and RTs. *Order* at 157-58. The Department made this determination from the record evidence; because AT&T only suggested in its Reply Brief at the last minute that the proportion of UDLC should be based on a forecast of total wholesale loops, AT&T Reply Brief at 82-87, there was no evidence in the record to support or refute AT&T's assertions regarding either the wisdom of using a "forecast" as a basis for determining the proportion, or with respect to the range of the forecast itself. The Department's refusal to accept, without more, AT&T's last minute Reply Brief "evidence," is not a "shifting" of the burden of proof — it is a determination to decide the case on the basis of the evidence in the record.

Verizon MA presented testimony concerning the proper amount of copper in the network, based on its break-point analysis. Exh. VZ-38A at 51. It also made a determination as to the proper amount of IDLC in the network (25 percent). Exh. VZ-38A at 33-34, 64-65. Those determinations of necessity yielded a mathematical conclusion with respect to the proper amount of UDLC in the network. AT&T proposed a vastly different breakdown. The Department arrived at its own conclusions, based on the record evidence, with respect to those respective percentages. The Department's determination was not a question of burden of proof; it was a question of the *informed judgment of an administrative agency*.

AT&T's insistence that the Department address the loop technology mix by beginning with a consideration of the appropriate UDLC percentage, based on a wholesale loop forecast, and arriving at the other percentages on the basis of that determination, is not only belated — it is entirely arbitrary. It is not necessary that either Verizon MA in its proposal or the Department in its decision approach this determination from AT&T's preferred vantage point.

The remainder of AT&T's argument regarding this issue reads more like a negotiation position than an argument. Its statement that "a 50 percent increase — from 10 to 15 percent UDLC — should be more than adequate" has no basis in fact, reason, or the record, and constitutes nothing more than AT&T's plea for a more favorable result.

Finally, AT&T asserts that "the record evidence shows that on a forward-looking basis a greater proportion of the more efficient IDLC technology than what is in place today is feasible," and that the Department made a mistake by not adopting a "more efficient" network configuration. AT&T Motion at 14. Indeed, the Department's choice to maintain a 2:1 ratio between IDLC and UDLC was a particularly aggressive one, given the fact that the Department's *Order* cuts the existing copper in the network *almost in half*, and UDLC — not IDLC — is capable of functioning in place of copper for unbundling and other purposes.

In sum, the Department's determination was *not* based upon burden of proof but on the evidence; and the *manner* in which it chose to determine the breakdown of the technology mix (although Verizon MA disagrees with its conclusion) was proper. AT&T's plea that the Department — for no legitimate reason — change the UDLC breakdown from 19.6 percent to 8.8 percent does not meet the Department's standard for reconsideration and should be rejected.

C. AT&T's Request that the Department Reconsider Its Decision To Use Current Demand To Establish UNE Loop Rates Should Be Rejected Because it Is Inconsistent with TELRIC and Would Result in UNE Rates Substantially Below Forward-Looking Costs.

In its Motion, AT&T renews its previously rejected argument that per unit loop costs should be based upon demand levels that assume 10 years of steady future growth rather than current demand. AT&T Motion at 15-16. In addition to failing to satisfy the required standard for reconsideration, AT&T's request must be denied because it is unreasonable and inconsistent because it seeks to develop per unit costs based on investment levels sufficient to serve current demand divided by ten years of "projected" demand.

In addition to being irrelevant to determining TELRIC loop costs, AT&T's "projection" of ten consecutive years of steady growth is unsubstantiated and grossly speculative, particularly in light of current economic conditions. Indeed, during the proceeding, Mr. Livecchi testified that Verizon MA experienced negative growth in 2001. Tr. 9 at 1738. Moreover, AT&T's position is completely illogical, inherently unreasonable, and inconsistent with basic principles of ratemaking. In order to achieve its goal of reducing per unit loop costs, AT&T advances the one-sided argument that the Department should base its demand estimates upon a ten year steady "growth" projection and then divide *total current TELRIC costs* over the ten year "projected" demand. By changing the denominator of the equation (*i.e.*, demand) without making any corresponding change to the numerator (*i.e.*, investment level necessary to serve the assumed demand) AT&T seeks to drive the per unit loop costs well below the forward-looking levels approved by the Department. Logic and consistency require that if projected demand is utilized then projected investment to serve projected demand would also have to be utilized.

In compliance with TELRIC, the investment in Verizon MA's study is the level of investment necessary for Verizon MA to develop a forward-looking network, based upon the Department's assumptions, capable of serving existing demand. Indeed, the utilization levels (*i.e.*, fill factors) approved by the Department are based on the forward-looking utilization levels that the Department determined necessary to serve current demand levels. Although AT&T has not sought reconsideration on the Department's fill factor determinations, AT&T seeks to undermine those fill levels by proposing that demand be increased while investment necessary to serve the increased demand remains unchanged. For example, the 48 percent utilization level (*i.e.*, fill factor) for distribution cable required by the Department would effectively be increased if demand (*i.e.*, utilization) were increased without a corresponding increase in investment. AT&T's attempted "end-run" of the Department's utilization determinations should be rejected.

Because Verizon MA's TELRIC study does not assume, consistent with TELRIC, projected levels of increased investment and expenses necessary to serve projected increased demand, there is no rational basis to spread the study's investment and expenses over projected demand. Accordingly, AT&T's request for reconsideration should be rejected.

D. The Department Should Clarify that a Weighted Average, Based on the Copper-to-Fiber Crossover Points Established by the Department, Should Be Used when Consolidating the Metro and Urban Density Zones.

In the *Order*, the Department directed Verizon MA to submit a compliance filing containing two cost results concerning the geographic density zones for deaveraging loop costs: (1) one set of cost results for the four density zones that currently exist (Metro, Urban, Suburban, and Rural), and (2) one set of cost results for three density zones, which would consolidate the Metro and Urban Zones into a single zone. *Order* at 219-20. In its Motion, the CLEC Coalition, arguing that the Department failed to specify the copper-to-fiber crossover point that Verizon MA should use when consolidating the Metro and Urban Zones for its compliance filing, states that this crossover point should equal the weighted average of the crossover points for the two zones as established in the *Order* (zero for the Metro Zone and 9,000 feet for the Urban Zone). CLEC Coalition Motion at 32-33. There is no support in the record or the Department's *Order* for this requirement.

Although Verizon MA believes that the cross-over point for the Urban Zone should be 4,000 feet rather than 9,000 feet, Verizon MA intends to use a weighted average cost based upon the zero cross-over point for the Metro Zone and the 9,000 feet cross-over point for the Urban

Zone — for the three zone compliance filing required by the Department. This approach is entirely consistent with the *Order*.

IV. THE DEPARTMENT CORRECTLY APPROVED VERIZON MA'S FORWARD-LOOKING TO CURRENT CONVERSION ("FLC") FACTOR AND VERIZON MA'S TREATMENT OF LEGAL AND ADVERTISING EXPENSES.

A. Verizon MA's FLC Factor Appropriately Measures Forward-Looking Costs.

Z-Tel's arguments that the Department should reconsider its approval of Verizon MA's FLC factor are based entirely on the mistaken assumption that the FLC is designed to permit Verizon MA to recover its embedded expenses. In fact, the Department correctly determined (as have the New York Commission and the administrative law judge in Pennsylvania) that the FLC is necessary to produce forward-looking expenses, not embedded expenses.[10/] Because this issue has already been addressed (and because there is no reason that Z-Tel's other arguments and its wholly improper declaration could not have been presented earlier), Z-Tel's Motion should be denied.

1. The FLC Produces Forward-Looking, Not Embedded, Costs.

Z-Tel continues to misrepresent the FLC, claiming that it is a "sham" that would allow Verizon MA to recover its "embedded" expenses. Z-Tel Motion, Ford Decl. ¶ 25. Z-Tel bases this argument on the fact that application of the FLC essentially ensures that the expense amounts identified in the numerator of Verizon MA's ACFs are not reduced when the ACFs are applied to forward-looking investment. Z-Tel Motion at 4-5 (arguing that Verizon MA's methodology is "suspect" because the "FLC is defined to make forward-looking expenses equal

10/ *See* Order on Unbundled Network Element Rates, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, New York Case 98-C-1357 (New York P.S.C. Jan. 28, 2002) ("*NY UNE Order*") at 61; *Recommended Decision – Proprietary Version, Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates*, Pennsylvania Docket No. R-00016683 (Pennsylvania PUC May 3, 2002 at 30.

the numerator of the ACF"). This is inappropriate, Z-Tel argues, because the expenses Verizon MA uses in its ACFs are embedded historical expenses. Z-Tel's claims are wrong.

As Verizon MA explained in its briefs and testimony, and as the Department correctly and explicitly found, the expenses used in Verizon MA's ACFs already have been adjusted to make them forward-looking. *See* Verizon MA Brief at 100-06; Verizon MA Reply Brief at 33-44; *Order* at 95-96. Since the numerator of Verizon MA's ACFs reflects adjusted *forward-looking* TELRIC expenses, but the denominator reflects unadjusted embedded investment, the FLC is necessary to ensure that when the ACFs are applied to the new, (presumably) lower TELRIC investment level, the forward-looking expenses identified by Verizon MA and approved by the Department are not improperly reduced.

Z-Tel's pseudo-mathematical attack, which is purportedly designed to show that Verizon MA's methodology is "inconsistent with basic mathematical laws," Z-Tel Motion at 4, and the improper declaration Z-Tel submits to support this point, are nothing more than the same, already-rejected complaint that Verizon MA uses embedded costs in the numerator of its ACFs. Z-Tel's equations reveal nothing more profound than the simple fact that the FLC ensures that the application of the ACFs produce the forward-looking expenses that Verizon MA previously identified in calculating its ACFs. *See* Z-Tel Motion at 4-5. As noted above, those expenses have been adjusted to be forward-looking, and thus, ultimately, Z-Tel's mathematical arguments are meaningless.[11/]

[11/] Z-Tel's submission of Dr. Ford's declaration is wholly improper, given that there is nothing in it that could not have been presented in the course of the proceeding. The declaration, and indeed Z-Tel's Motion, present no new arguments or facts, and thus are wholly insufficient and improper in the context of a petition for reconsideration. *Commonwealth Elec. Co.*, D.P.U. 92-3C-1A, at 3-4 (1995) (reconsideration petitions should not reargue issues considered and decided in the main case).

2. Verizon MA's Forward-Looking Expenses Are Not Identical to Its Embedded Expenses.

Z-Tel argues that the expenses used in the ACFs are not properly characterized as forward-looking because they are purportedly equal to Verizon MA's historical, embedded expenses. The primary support for Z-Tel's contention appears to be Verizon MA's response to a CLEC Coalition Data Request. *See* Exh. VZ-CC 10-4. In its response, Verizon MA stated that "[i]t is not Verizon's position that the forward-looking expenses used in the calculation of annual cost factors are significantly lower than current booked expenses." *Id.* But the fact that the forward-looking expenses are not significantly lower than booked expenses does not imply that the two are identical. In fact, Verizon MA calculated forward-looking expenses by adjusting booked expenses to reflect productivity, inflation, and reductions in maintenance expenses due to installation of new copper facilities.[12/] The fact that these adjustments do not produce drastically lower expenses is not surprising: for example, inflation, particularly in the form of rising labor costs, often exceeds the savings in labor time measured by the productivity factor. Moreover, the expense reductions that are most likely to be realized in the forward-looking network — the lower expenses associated with a more efficient technology mix — are not accounted for in the calculation of the ACFs, but in their application. Verizon MA's methodology ensures that the aggregate network expenses will reflect, for example, *more* of the lower expenses associated with fiber and *less* of the higher expenses associated with copper. As the Department found, Verizon MA's forward-looking costs "reflect the efficiency gain from a change in technology mix." *Order* at 95.

12/ In his declaration in support of Z-Tel's Motion, Dr. Ford also attempts to prove that the numerator of Verizon MA's ACF contains embedded costs by comparing 1999 ARMIS data for one expense account to the value used in Verizon's ACF calculation. Z-Tel Motion, Ford Decl. ¶ 9. But the fact that the two values are identical is exactly as it should be. Dr. Ford, obviously not understanding how the cost studies are calculated, compared the numbers prior to any adjustments for inflation and productivity.

In any event, the Department has required Verizon MA to make still more adjustments for productivity, maintenance expenses, and advertising expenses. Thus, contrary to Z-Tel's claim, Verizon MA's forward-looking expenses are not "whatever Verizon says they are." Z-Tel Motion at 2. Rather, they are what the Department has confirmed they are. In short, the evidence is clear that the numerator of Verizon MA's ACF calculations reflects forward-looking, not embedded, expenses.

3. Expenses Should Not Be Directly Related to the Level of Investments.

Dr. Ford observes correctly that forward-looking investments in Verizon MA's cost study are entirely independent of forward-looking expenses. He suggests this is a "perverse result," contending that the two should somehow be linked. Z-Tel Motion, Ford Decl. ¶¶ 3, 18-20; *see also id.* ¶¶ 7-8. As investment prices increase or decrease, according to Dr. Ford, so should the related expenses. This is simply incorrect. There is no reason to believe that maintenance expenses, for example, will vary based on the price paid for the equipment. Equipment purchased today for $10 will not be less expensive to repair simply because tomorrow the price for the identical equipment drops to $9 — and even if repair expenses do decline over time, there is no basis to assume that they will decline by a corresponding percent. This argument is akin to suggesting that the cost of dry cleaning a suit will vary depending on whether that suit was purchased in a department store for $500 or in a bargain outlet for $100. Indeed, it is precisely because this clearly is not the case that a FLC adjustment is necessary.[13/]

13/ Z-Tel also criticizes the Department's statement that the FLC and the FCC's Current-to-Book (CC/BC) ratios perform similar tasks. Z-Tel Motion at 7; *Order* at 95. But the Department was entirely correct. Both the FLC and the CC/BC ratio are used to ensure consistency of time periods. The two factors differ in that the time periods being examined differ. CC/BC ratios are used to align current expenses with current investments. The FLC, on the other hand, is used to align forward-looking expenses with forward-looking investments. Z-Tel's claim that the FLC does not produce consistency in time periods is again the incorrect assertion that the numerator of the ACF is embedded, rather than forward-looking, costs.

4. The FLC Does Not Violate TELRIC.

Z-Tel incorrectly asserts that the FLC is inconsistent with the Supreme Court's decision in *Verizon*. *See* Z-Tel Motion at 8-11. This assertion turns on nothing more than Z-Tel's repeated contention that the FLC allows Verizon MA to recover its embedded costs.[14/] Verizon MA has established, and the Department already has found, that the FLC is necessary for calculating *forward-looking* costs, not embedded costs. Although Z-Tel seems to suggest that it is improper even to *begin* with historical expenses, that is absurd. Z-Tel Motion at 10-11. Using historical expenses as a starting place to estimate what forward-looking expenses likely will be is the *only* sensible approach. Notwithstanding that Verizon MA begins with embedded expenses, the expenses Verizon MA uses in its studies are then adjusted to be forward-looking — a process fully in line with the Act, the FCC's rules, and the *Verizon* decision. Accordingly, Z-Tel's request for reconsideration on this issue is without merit.

B. The Department Correctly Found that Verizon MA Should Recover Legal Expenses in the Common Overhead ACF.

The Department correctly found that legal expenses "are expenses Verizon legitimately incurs in the course of provisioning UNEs to CLECs and, thus, Verizon should be allowed to recover them." *Order* at 123 (citations omitted). The Department expressly rejected the CLEC Coalition's argument that because CLECs do not recover their legal expenses from Verizon MA, Verizon MA should not be able to recover its legal expenses from CLECs, noting that there is no reason why CLECs *should* be able to recover such expenses from Verizon MA, since Verizon MA is not a CLEC customer. *Order* at 123-24. The Department also rejected the CLEC

14/ Z-Tel incorrectly asserts that "[a]s Verizon's brief admits, the FLC is designed to estimate forward-looking expenses by converting forward-looking investment to its 'embedded investment' and then applying the cost factor to the embedded level." Z-Tel Motion at 8. In fact, as the Department recognized, the FLC converts the embedded investment in the denominator into a forward-looking investment so that there is consistency in time: the numerator (costs) and denominator (investment) are both forward-looking. *See Order* at 95.

Coalition's claim that Verizon should not be permitted to recover its legal expenses because such expenses "are spent against the CLECs' interests." *Order* at 124. As the Department correctly found, "[i]t is legitimate for private companies to have legal expenses reflected in the prices of their products to protect their own interest in dealing with their customers and other parties," and "[a] reasonable level of such expense is a cost of doing business."[15/] *Order* at 124.

The CLEC Coalition offers nothing to warrant reconsideration of the Department's decision; instead, the CLEC Coalition merely recycles the same arguments already rejected by the Department. *See* CLEC Coalition Motion at 32-34. The CLEC Coalition, moreover, has provided no reason why the Department should reconsider its decision that legal expenses are a legitimate cost that UNE customers should bear. In finding that legal expenses are a legitimate cost of doing business, the Department noted that "producers pass on to their consumers legal expenses from product liability suits, and Health Maintenance Organizations ('HMOs') may increase premiums based on the expectation that their legal expenses will increase as a result of new legislation allowing their customers (*i.e.*, patients) to sue HMOs." *Order* at 124. The CLEC Coalition claims that this analogy is flawed because an HMO is an organization in a competitive industry; *see* CLEC Coalition Motion at 33. But the CLEC Coalition misses the point of the analogy, which is simply that companies do recover their legal expenses from their customers, even in situations where (at least some) customers believe the producers are taking legal positions that are contrary to (at least some) customers' interests. Whether or not the CLEC Coalition believes that the telecommunications industry is competitive is beside the point: under the 1996 Act and the applicable regulations, Verizon MA is specifically permitted to

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15/ The New York Commission reached the same conclusion, upholding the Administrative Law Judge's finding that legal expenses are properly recovered from CLECs. *Recommended Decision on Module Three Issues*, New York Case 98-C-1357 at 44 (New York State Public Service Commission, May 16, 2001) at 57-58, *aff'd* by *NY UNE Order*.

recover from its CLEC customers the legitimate, forward-looking costs that Verizon MA incurs in providing UNEs, including Verizon MA's legal expenses and other common overhead costs.[16/] The Department's analogy simply makes clear that legal expenses *are* a legitimate cost.

The CLEC Coalition also claims that allowing Verizon MA to recover its legal expenses is somehow inconsistent with the Act. CLEC Coalition Motion at 33. To the contrary, as just noted, the FCC has determined that the Act permits Verizon MA to recover such expenses. Indeed, other than making the assertion, the CLEC Coalition does nothing to explain *how* the Department's conclusion is contrary to the Act or to the Supreme Court's *Verizon* decision, *see* 525 S. Ct. at 1662; nor does it even identify what provisions of the Act allegedly have been violated.

The crux of the CLEC Coalition's position is nothing more than the complaint that it would be unfair for Verizon MA to be permitted to recover its legal costs of seeking to "thwart competition." CLEC Coalition Motion at 34. But this is the precise claim that the CLEC Coalition raised in its brief and that the Department considered and rejected. There is no basis to reconsider that decision here. In any event, Verizon MA's legal expenses are not aimed at "thwart[ing] competition." To the contrary, Verizon MA's interpretation of the applicable rules and statutory provisions would produce genuine and more effective competition from facilities-based providers. And Verizon MA has every right to advocate its good faith interpretation of statutes and regulations and to seek recovery of its costs in providing wholesale products and services to its CLEC customers. Moreover, not every CLEC will oppose every position Verizon MA takes in a given proceeding; in some cases, Verizon MA's positions may advance the interests of some of its CLEC customers, even if other CLECs oppose Verizon MA's positions.

16/ *Local Competition Order* ¶ 694 ("a reasonable measure of [common] costs shall be included in the prices for interconnection and access to network elements"); 47 C.F.R. § 51.505(a).

Finally, the CLEC Coalition's motion appears to acknowledge what its witness, Mr. Fischer, already admitted at the hearing: that many regulatory and legal costs are not even incurred in proceedings in which Verizon is adverse to CLECs. *See* Tr. 10 at 1951-52. But the CLEC Coalition's effort to get around this — its alternative "clarification" that the Department at least disallow "any litigation or legal expenses that serve to limit CLEC competition," CLEC Coalition Motion at 34 — is a hopelessly vague standard. Even the CLECs themselves likely would not agree on whether a position taken by Verizon MA would "limit CLEC competition;" nor is it clear how the Department could apply such a standard or whose view of whether a legal expense related to "limit[ing] CLEC competition" would govern. In any event, the Department already has determined that Verizon MA's legal expenses are a legitimate cost of doing business and should be recovered from CLECs, and thus the proposed "clarification" is unsupportable.

C. The Department's Order Correctly Permits Verizon MA To Recover Wholesale Advertising Expenses in a Forward-Looking Competitive Environment as Permitted under TELRIC.

The CLEC Coalition's arguments in opposition to the Department's decision authorizing Verizon MA to recover its wholesale advertising expenses are unavailing. As an initial matter, the Department should deny the CLEC Coalition's request for reconsideration because all of the arguments presented were previously raised by the CLEC Coalition and rejected by the Department. *Compare* CLEC Coalition Motion at 36-39 *with* CLEC Coalition Brief at 32-35 *and* CLEC Coalition Reply Brief at 23. The CLEC Coalition has therefore failed to meet the standard for seeking reconsideration of Department orders. *See Phase 4-M Order* at 4-6.

In any case, as the Department has already correctly found, the CLEC Coalition's arguments are wrong on the merits. The CLEC Coalition first claims that because Verizon MA is "vigorously advocating . . . that UNEs be abolished," Verizon MA is not engaging in advertising for the purpose of "drumming up long-term CLEC UNE business and goodwill."

CLEC Coalition Motion at 37. Consequently, the CLEC Coalition concludes that Verizon MA should be deprived of its right to recover its wholesale advertising expenses. *Id.* at 37-38. But that is a complete *non sequitur*. Verizon MA has not somehow waived its statutory right to recover all its forward-looking costs of providing a UNE by arguing to the FCC in a different proceeding that the statutory test for mandatory unbundling is not met for one or more types of facilities. In any case, Verizon MA is *currently required* to provide UNEs to CLECs. Thus, unless and until the law changes, Verizon MA will continue to incur forward-looking costs associated with the provision of UNEs, including wholesale advertising costs.

The CLEC Coalition next argues that the Department has misinterpreted the FCC's TELRIC pricing methodology because the forward-looking competitive telecommunications market to which the FCC referred when establishing the TELRIC methodology is solely a competitive "retail" market. *See* CLEC Coalition Motion at 38. That is simply incorrect. In fact, the FCC has stated that its TELRIC pricing rules were intended to "produce rates for monopoly elements and services that approximate what the incumbent LECs would be able to charge *if there were a competitive market for such offerings*." *Local Competition Order* ¶ 738 (emphasis added). Thus, it is clear that the FCC was referring to a competitive market *for UNEs*.

The Department thus correctly based its decision to allow the recovery of wholesale advertising costs on the FCC pricing rule requirements that rates for "elements and services [shall] approximate what the ILECs would be able to charge if there were a competitive market for such offerings." *Order* at 131 (citing *Local Competition Order* ¶ 738). The Department stated:

> When we determine UNE rates, it is of critical importance to maintain consistency between assumptions that affect multiple UNEs. A party in this case should not be able to pick and choose different assumptions for different UNEs, depending on whether

> the assumption produces results favorable to its position. In Section V.A (Cost of Capital) and Section VI.C (Fill Factors), we assume a level of efficiency that simulates the conditions in a competitive market. Thus, the competitive market assumption should be applied in determining ACFs. Applying that assumption, we find that Verizon should be allowed to recover expenses for wholesale advertising.

Id.

The CLEC Coalition finally alleges that the Department's *Order* fails to recognize that CLEC decisions to purchase Verizon MA's UNEs are not based on Verizon MA's wholesale advertising, but on the TELRIC-based rates that the Department sets for UNEs. *See id.* But there is no evidence to support the CLEC Coalition's claims that wholesale advertising does not influence CLEC purchasing behavior or that wholesale advertising does not stimulate the wholesale market. For example, as the Department found, "ILECs may engage in wholesale advertising to persuade CLECs that choosing ILECs' UNEs is a more attractive option than building their own facilities." *Id.*

Moreover, the Department's *Order* required Verizon MA to "use its wholesale advertising budget in Massachusetts for the year 2002 as the basis for a revised wholesale advertising factor" to be included in Verizon MA's compliance filing. *Order* at 132. Although Verizon MA disagrees that today's wholesale budget properly recovers all of Verizon's forward-looking advertising costs, the Department's approach should alleviate all of the CLEC Coalition's concerns.

At the end of the day, Verizon MA, as an ILEC in a forward-looking competitive market, will continue to incur costs associated with promoting its wholesale UNE offerings. These are precisely the types of costs contemplated for recovery under the TELRIC methodology; the Department should reject the CLEC Coalition's strained interpretation of TELRIC.

V. THE CLECS' CRITICISMS OF THE DEPARTMENT'S FINDINGS REGARDING VERIZON MA'S HOT CUT CHARGES ARE WITHOUT MERIT.

A. No Further Reductions to Verizon MA's Fully-Coordinated Hot Cut Costs Are Necessary or Desirable.

The Department dedicated a full 51 pages of its *Order* to the issue of non-recurring costs generally, and another 12 pages to the issue of hot cuts specifically, methodically considering the work activities and making adjustments to some forward-looking adjustment factors ("FLAFs") and other aspects of Verizon MA's model. Even AT&T admits that the Department "took a *hard look* at the specific tasks and associated work times for hot cuts." AT&T Motion at 22 (emphasis added). Despite that careful analysis, AT&T now raises a litany of attacks on specific times and adjustment factors contained in Verizon MA's non-recurring cost study as it relates to hot cuts, implausibly contending that the Department simply overlooked those tasks through inadvertence. *Id.* at 24. Moreover, AT&T's discussion is replete with assertions about appropriate task times and FLAFs that have no support on the record and appear to be pulled out of thin air. The Department should reject AT&T's unfounded attempt to reduce hot cut costs further.

AT&T's argument seems to be premised on the mistaken idea that the Department "found" that Verizon MA's hot cut rate was too high and could discourage competition, and then failed to take sufficient steps to remedy that failing. In reality, the Department explained that minimizing service disruption to customers should be a "basic business priority" of Verizon MA and that the hot cut costs in this proceeding have evolved in response to CLEC requests. *Order* at 492-93. The Department thus "allow[ed] Verizon's tasks as they are delineated in its NRCM," with some modifications. *Id.* at 493. The Department did note that, "*[i]f* Verizon's hot cut cost study fails to incorporate forward-looking assumptions sufficiently, *then* inappropriately high charges" could stifle competition. *Id.* at 493-94 (emphasis added). But the remainder of the

Department's analysis was dedicated to ensuring that the "if" did not happen ? by adjusting Verizon MA's cost studies in a manner that addressed the Department's concerns.

To that end, the Department directed Verizon MA to "adjust specific aspects of its hot cut cost study in order to make its study more forward-looking." *Id.* at 494. In total, the Department mandated adjustments to the forward-looking adjustment factors for 19 activities. For those activities where it did not order a hot cut specific adjustment, the Department ordered Verizon MA to apply the general 20 percent downward adjustment to the FLAF it ordered for all other non-recurring activities. *Id.* at 494-95. The Department also ordered Verizon MA to use the low end of the 95 percent confidence interval for all non-recurring work times, including those related to hot cuts. *Id.* at 495. All told, the Department's mandated adjustments slashed Verizon MA's proposed hot cut rate nearly in half. In addition, the Department ordered Verizon MA to develop an *even less costly* alternative to the hot cut process modeled in Verizon MA's NRCM.

AT&T does not even attempt to explain how the Department could have engaged in such a "hard look" at Verizon MA's hot cut costs, and yet "missed" the costs and needed adjustments to FLAFs it raises here. In any event, AT&T's assertions concerning the further reductions it would have the Department make are not based on any evidence in the record but are made up out of whole cloth. Indeed, AT&T repeatedly makes claims that a particular FLAF should be set at "10 percent" or "60 percent" without offering a single cite to evidence to support this recommendation. In fact, the Department's adjustments already bring the task times below those which Verizon MA will actually incur to provision CLECs' requests for UNEs, and AT&T's further proposed adjustments have no basis in reality. For example, AT&T characterizes CO wiring tasks 5 and 7 as "checking, confirming, and completing forms." In reality, as their names suggest, those tasks involve the frame tech physically testing loops to ensure dial tone is present:

Verizon's model describes Task 5 as "Check to insure that existing central office (end-user) dial tone is leaving the central office OK on the correct pair and cable; report back to the RCCC," and Task 7 as "Confirm assignment by verifying that CLEC dial tone is present at the assigned location. Verify that cable and pair assignment is correct. Notify RCC of troubles and obtain new assignment." To perform these tasks, the frame tech must walk to the correct block of loops on the frame, count the block to identify the correct loop, take out the Butt-in test set, clip on the test set, check for dial tone, dial an access code, and listen to a 10-digit number. AT&T's assertion that these tasks can be completed in 20 or 30 seconds has no support in the record and is any case facially incorrect. The same is true for its other purported examples. In short, AT&T has offered the Department no basis to revisit its close and careful analysis of hot cut costs.

B. The Department Has Already Rejected the $35 Hot Cut Rate, on Both an Interim and Permanent Basis, and Neither AT&T nor the CLEC Coalition Offer the Department Any Basis To Revisit its Express Conclusions.

Both AT&T and the CLEC Coalition urge the Department to revisit the $35 rate for a fully-coordinated hot cut that it expressly rejected in the *Order*. The CLEC Coalition revisits the issue of a permanent $35 rate under the same erroneous and misplaced section 271 public interest argument it pressed in its initial brief, and argues in the alternative for an interim $35 rate until Verizon MA has an alternative hot cut process in place that costs less than $35. AT&T advocates the $35 rate "as an interim measure" until "commercially viable alternatives are in place with TELRIC based rates." Neither AT&T nor the CLEC Coalition offers any reason for the Department to reconsider its decision to reject the $35 rate, either on a permanent or interim basis.

The Department already rejected the $35 hot cut rate in a well-reasoned decision. Though both the CLEC Coalition and AT&T present their arguments as if the $35 rate is based on new facts or is something the Department failed to consider, both of them argued that hot cut rates should be set no higher than $35 in their post-hearing briefs. *See* CLEC Coalition Brief at 12; AT&T Reply Brief at 17. The Department acknowledged those arguments, noting that the Department of Justice had expressed concern over Verizon's hot cut rate in New Jersey, and that Verizon had used a $35 rate in seeking section 271 approval for that state at the FCC. *Order* at 492 & n.182. As detailed above, the Department then fully reviewed the tasks involved in Verizon MA's hot cut procedures and made various modifications to FLAFs for 19 activities (in addition to the adjustments it ordered for non-recurring costs generally), resulting in a total hot cut cost roughly one-half of that proposed by Verizon MA.[17/]

The Department expressly recognized that the cost produced by this adjustment would "significantly exceed the $35.00 charge that exists in certain other Verizon jurisdictions." *Order* at 499. The Department determined that this difference exists, "in large part, because the hot cut process includes tasks that the CLECs have specifically requested in order to ensure trouble-free migration of customers from Verizon to other carriers." *Id.* Thus, the Department did not, as the CLEC Coalition suggests, reject the $35 rate on the mistaken premise that hot cuts in Massachusetts involve different tasks than hot cuts in New Jersey or New York, but rather did so on its independent judgment not to blindly adopt the interim rate in place in those states. The Department properly recognized that $35 is *not* a TELRIC-based rate, and instead opted to make adjustments to Verizon MA's model to arrive at what it viewed as a TELRIC rate.[18/] The

[17/] AT&T and the CLEC Coalition attempt to frame their suggestion that $35 be an *interim* rate as a new idea. But the $35 rate is "interim" in the two states (New York and New Jersey) that AT&T and the CLEC Coalition urged the Department to follow. The Department declined to follow that approach, and thus appropriately rejected the $35 rate even as an interim measure.

[18/] Indeed, both the New York and New Jersey commissions determined that the cost-based, TELRIC rate for hot cuts should be well above $35. *See NY UNE Order* at 141 (approving $185.54 hot cut rate); Decision and Order, *In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.*, Docket No. T000060356, at 158 (NJ B.P.U., March 6, 2002) ("*New Jersey UNE Order*") (approving $159.76 hot cut rate); *see also* Findings, Opinion and Order No. 5967, *Application of Verizon Delaware Inc. (F/K/A Bell Atlantic-Delaware, Inc.), for Approval of Its Statement of Terms and*

Department accounted for any remaining concerns of the cost being too high by ordering Verizon to give CLECs an *option* to use an even less expensive alternative.

The CLEC Coalition offers no new facts or arguments to support a contrary conclusion here. In fact, the CLEC Coalition's brief is merely a warmed-over, slightly truncated version of its post-hearing brief, incorporating some of the same quotations and tables it used there, and therefore does not come close to meeting the Department's standard for reconsideration motions. And even if the CLEC Coalition's section 271 "public interest" arguments were properly before the Department, its arguments are meritless. The statutory standard for setting UNE rates is contained in section 252 of the Act and the FCC's implementing regulations, 47 C.F.R. § 51.501 *et. seq.* ? section 271 considerations have nothing to do with the Department's obligation to set TELRIC-compliant rates here. The CLEC Coalition's position boils down to an argument that, once Verizon obtains section 271 approval with one set of rates, a state commission can never increase those rates, even if it determines that forward-looking costs have increased because, for example, the ILEC has put in place new processes or procedures at the CLECs' request. That proposition is directly contrary to the governing standard. Sections 251 and 252, as well as the FCC's regulations, require that UNE rates be based on the forward-looking *costs* of providing network elements, regardless of whether the incumbent has section 271 approval.

Both AT&T's and the CLEC Coalition's arguments are premised on a need to provide Verizon MA with an incentive to offer a functional less costly hot cut alternative in a timely manner. That is a wholly inappropriate consideration for setting UNE rates: the Act requires that such rates be based on cost, not *below* cost on the basis of some vague desire to punish the ILEC

Conditions Under Section 252(f) of the Telecommunications Act of 1996, PSC Docket No. 96-324 Phase II, at 36 (DE P.S.C., June 4, 2002) ("*Delaware UNE Order*") (approving $113.71 hot cut rate, but imposing a $35 interim rate).

or motivate it to take some other action. In any event, Verizon MA will timely submit its compliance filing in accordance with the Department's schedule. That filing will lay out a new hot cut procedure that involve less manual coordination than the current hot cut process and will be substantially less expensive than the rate for a fully-coordinated hot cut using the Department's ordered adjustments, and thus will fully comply with the Department's *Order*. This less costly alternative will be available immediately to CLECs who desire it. There is thus no need for an "interim" rate or to provide Verizon MA any incentive to move quickly.

In a last-ditch effort to bring the $35 hot cut to Massachusetts, the CLEC Coalition moves for "clarification" that any less costly alternative Verizon MA introduces will cost less than $35. As outlined above, $35 is not a cost-based rate. Thus, there is no reason to assume that a procedure with less manual coordination and resulting work times would cost less than the arbitrary $35 rate. The Department's *Order* properly did not require that the alternative hot cut approach have a particular cost, except that the alternative be "less costly" in a general sense by excluding many of the coordination activities. As noted, Verizon MA will propose a substantially less expensive alternative to the fully-coordinated hot cut in its compliance filing. Without knowing the details of that alternative, the CLEC Coalition has no basis on which to judge the appropriate cost. If the CLEC Coalition has any objections to Verizon MA's compliance hot cut process and rate once it sees and evaluates Verizon MA's process, it may raise those concerns at that time.

C. AT&T's Proposal for the Development of a New High Volume Cutover Process Has No Place in this Proceeding.

AT&T attempts to use the Department's *Order* as a vehicle to have Verizon MA develop an entirely new hot cut ordering and provisioning process with entirely new costs. AT&T phrases its request as a motion to "clarify," but what it requests is that Verizon MA be required to participate in a "collaborative process involving . . . interested parties to work out the details of" yet a *third* option to Verizon MA's present hot cut process. AT&T never presented this "option" to the Department before now, and that the Department in no way contemplated in its *Order* the type of high volume customer cutover process AT&T suggests, which, by AT&T's own admission "is very different" from the hot cut process for which Verizon MA's model estimates costs. AT&T Motion at 29-30. It is clearly well outside the scope of this UNE *pricing* proceeding, especially at this late date, to require the industry-wide development of a new process because AT&T has suddenly decided it would like Verizon MA to provide such an option. *See, e.g.*, *Boston Edison Co.*, D.P.U. 90-335-A, at 3 (1992) (explaining that clarification does not involve substantively modifying a decision). Accordingly, the Department should reject AT&T's suggestion.

VI. THE CLEC COALITION'S ARGUMENTS REGARDING NON-RECURRING COSTS HAVE ALREADY BEEN REJECTED AND MAKE NO SENSE.

The CLEC Coalition's meritless attacks on the Department's approach to non-recurring costs must be denied. The Department has already considered and rejected the argument that the Department should have thrown out Verizon MA's non-recurring cost model altogether or lowered all FLAFs even further than it did, and the CLEC Coalition offers no new arguments in that regard. The remainder of the CLEC Coalition's arguments simply make no sense as a practical or statistical matter.

The CLEC Coalition's arguments that the Department should throw out Verizon MA's model or, in the alternative, mandate a greater across the board reduction to the forward looking adjustment factors ? proposals that not even AT&T or WorldCom make ? are easily disposed of. As detailed in the above section discussing AT&T's attack on Verizon MA's hot cut costs, the Department made substantial modifications to Verizon MA's non-recurring costs to address the various concerns raised about Verizon MA's survey. *Order* at 470. Those modifications included using the low end of the 95 percent confidence interval, an approach that the Department concluded "address[ed] some weakness in Verizon's survey methodology."[19/] *Order* at 468. The Department also adjusted the FLAFs downward by 20 percent across the board to "correct[] the bias inherent in Verizon's estimates of FLAFs." *Order* at 474-75. The Department thus clearly considered the details of Verizon MA's model and determined on the record before it that Verizon MA's model, with certain adjustments, could be trusted to produce accurate, forward-looking costs. The CLEC Coalition's rhetoric offers no basis to undermine the Department's conclusion.

The CLEC Coalition repeats its argument that the Department should use the minimum survey times to address bias and unreliability in Verizon MA's study, even as it admits that it argued that precise point in its briefs. CLEC Coalition Motion at 18. The Department properly rejected that argument, explaining that "use of the minimum task time reported would be inappropriate because it would fail to capture the information provided by the entire sample." *Order* at 464. In particular, contrary to the CLEC Coalition's apparent assumption, the minimum time does not represent the most "efficient" time. Workers encounter a wide variety of working environments and types of transaction that may affect the time required to perform a task, and using the mean time appropriately captures that variation.

In the face of the Department's decision, the CLEC Coalition purports to propose a "bifurcated approach" that would use minimum task times, *except* when minimum task times are purportedly not reliable, in which case it would apply an entirely arbitrary 79 percent reduction

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19/ As explained in Verizon MA's Motion, this is not the best approach to correct for any lack of randomness in Verizon MA's model, and we urge the Department to consider a trimmed mean approach instead. However, either approach demonstrates that the Department need not scrap Verizon MA's model in order to account for concerns regarding its reliability.

to the average time, apparently to simulate what the CLEC Coalition believes the minimum time should be. CLEC Coalition Motion at 19-20. This approach is nonsensical. Even if the 79 percent figure accurately simulated the minimum time, the CLEC Coalition's proposal would suffer from the same infirmities that led the Department to reject adoption of the minimum times in the first place. Indeed, the CLEC Coalition's proposal to use the minimum times for tasks for which there are 30 or more observations would force Verizon MA to use the minimum time precisely where its survey, and therefore the resulting average time, is most reliable. The CLEC Coalition's proposal to reduce Verizon MA's times by 79 percent where there are fewer than 30 observations makes even less sense. Among other things, this arbitrary approach would in many cases lead to work times that are even *less* than the minimum time reported on the survey. If, for example, the survey resulted in 8 responses of 3 minutes, 8 responses of 4 minutes, and 8 responses of 5 minutes (and thus an average time of 4 minutes), the CLEC Coalition's approach would reduce the work time to 0.8 minutes, well below even the minimum time reported by any of the 24 workers who performed the task.

The CLEC Coalition also asserts that the Department should have ordered an across the board 50 percent reduction of Verizon MA's FLAFs, instead of the 20 percent reduction adopted. CLEC Coalition Motion at 22-24. The CLEC Coalition's proposal is arbitrary and capricious. It notes that, in response to specific concerns raised about hot cuts, the Department ordered a 50 percent reduction in certain FLAFs associated with hot cuts. From this, the CLEC Coalition leaps to the conclusion that "there is a presumption that Verizon's cost study underestimates future efficiencies by at least 50 percent across the board." *Id.* at 23. Obviously, that is a *non sequitur*. Even assuming the Department's conclusion regarding a few specific FLAFs relating to hot cuts were correct, it says nothing about whether Verizon MA's FLAFs for the hundreds of other unrelated tasks were too low, let alone that they were all too low by a factor of 50 percent.

Finally, the CLEC Coalition's motion for "clarification" of the meaning of the 95 percent confidence interval demonstrates its failure to understand what the Department ordered. The Department ordered Verizon MA to use the low end of the 95 percent confidence interval for each task time. This does not mean, as the CLEC Coalition seems to suggest, that the Department ordered Verizon MA to use the lowest 5 percent of times captured for each activity. CLEC Coalition Motion at 24. A 95 percent confidence interval is the range of times within which it is 95 percent likely that the "true" time lies. The Department ordered Verizon MA to use the low end of that range for each task time. Thus, for example, if the mean time for a given activity is 15 minutes, and the 95 percent confidence interval is 12 to 18 minutes, then the Department's approach would require Verizon MA to use a time of 12 minutes. It would not, as the CLEC Coalition erroneously believes, require use of some average of the lowest 5 percent of times captured for that activity.

VII. THE CLEC COALITION'S RECYCLED COLLOCATION ARGUMENTS SHOULD BE REJECTED.

A. The CLEC Coalition's Criticisms of Verizon MA's Cross Connect Transition Plan Are Premature and, in Any Event, Reflect a Misunderstanding of Verizon MA's Plan.

The Department correctly adopted Verizon MA's new cross connect rate structure, which has been approved, pursuant to a settlement agreement between Verizon and other CLECs, in a number of Verizon jurisdictions and by the FCC. *See* Exh. VZ-35; *see also* F.C.C. Tariff Nos. 11 § 28, 1 § 19. Under this new rate structure, Verizon MA will assess both non-recurring and recurring charges based on the number of cross connects ordered by the CLEC. Under the prior rate structure, the CLECs paid no non-recurring charge, regardless of how many cross connects they ordered, and paid a recurring charge only when they began using the cross connects.

The Department-approved rate structure will benefit both the CLECs and Verizon MA. The CLECs will benefit from this rate structure because the new recurring rates are significantly lower than the recurring rates under the prior rate structure.[20/] Verizon MA will benefit because it now will recover, through the non-recurring charge, a portion of the cross connects costs at the time they are purchased, rather than only when the CLECs begin using them. Under the prior rate structure, where CLECs did not pay until they used the cross connect, CLECs have stockpiled large quantities of unused cross connects, leading to inefficient congestion on Verizon MA's central office frames and causing Verizon MA to under-recover its forward-looking costs.

Verizon MA fully explained the new rate structure during the proceeding, and no CLEC opposed it. AT&T, the only party that raised any issue, did not object in principal to the rate structure but believed there should be a transition mechanism. AT&T Brief at 234. Thus, in its *Order*, the Department approved the rate structure and directed Verizon MA to file a transition plan with its compliance filing. *Order* at 432. Verizon MA will be proposing essentially the same plan to transition to this new rate structure that has been agreed to in negotiations between Verizon and a number of other CLECs. As with the cross connect rate structure, this transition plan has already been approved in 10 Verizon jurisdictions and by the FCC. *See* Exh. VZ-35; *see also, e.g.*, F.C.C. Tariff Nos. 11 § 28, 1 § 19.

20/ For example, under the current Massachusetts tariff, the SAC POT Bay Termination charge for a 2-wire voice grade cross connect is 8 cents, and the SAC Cable and Frame Termination charge is 19 cents (for a total charge of 27 cents per cross connect), DTE MA No. 17, Part M, § 5.2.4; under the cost studies filed in May 2001, the SAC POT Bay Termination charge for a single voice grade cross connect is 2.8 cents and the SAC Cable and Frame Termination is 4.99 cents (for a total recurring charge of less than 8 cents per voice grade cross connect). *See* Verizon MA Cost Study filed May 8, 2001.

Despite the fact that the CLEC Coalition was completely silent on the new rate structure earlier in the case, it now argues that the Verizon MA transition plan will constitute "retroactive ratemaking" by "assess[ing] collocated CLECs tremendous non-recurring charges for cross connects that have been in use . . . for years." CLEC Coalition Motion at 27-29. This argument fails for several reasons.

First, the CLEC Coalition's argument need not even be addressed at this stage of the proceeding. The Department specifically "require[d] Verizon to submit [the restructuring] plan as part of its compliance filing." *Order* at 432. The CLEC Coalition will therefore have ample opportunity to respond to Verizon MA's transition proposal in the compliance phase of this proceeding. Until the plan is filed, however, any opposition to it is premature.

Second, the CLEC Coalition's concerns about Verizon MA's transition plan are unfounded. Verizon MA has agreed to *waive* the NRCs for all cross connects in use prior to the transition date, even though the recurring charges Verizon MA has collected on those cross connects to date do not come close to recovering Verizon MA's approved costs.[21/] In addition, the CLECs will have 30 days from the effective date of Verizon MA's compliance tariff to return any number of their unused cross connects *for free*, thus avoiding any charges.[22/] Instead, Verizon MA will bear the enormous stranded investment costs associated with those returned

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21/ In its Reply Brief, Verizon MA stated that "[m]onthly recurring costs that have been paid prior to the date of transition . . . will be applied to the new non-recurring charge." Verizon MA Reply Brief at 239. That was not an accurate description of the transition plan.

22/ Verizon MA's transition plan is more than reasonable, given the CLECs' prior pattern of over-ordering large quantities of cross-connects. Though not a part of the record here, by the end of 2000, Massachusetts CLECs had ordered 1.96 million voice grade cross connects, but were using only 69,753 of them. By the end of 2001, the number ordered had grown to over 2.12 million, while the number in use remained shy of 120,000. And by the end of the second quarter of 2002, Massachusetts CLECs had ordered 2.22 million voice grade cross connects, and were using only 121,074 of them (a utilization rate of less than 5.5 percent).

cross connects.[23/] Thus, the CLEC Coalition's claim that Verizon MA's new rate structure constitutes "retroactive ratemaking" rings hollow. No CLEC will be required to bear the Department-approved non-recurring costs for cross connects that it already was using on the date the plan goes into effect.

Finally, the Department should reject the CLEC Coalition's seemingly innocuous request "that the Department clarify that [the cross connect rate restructure] only applies to collocation arrangements ordered out of Verizon's intrastate tariff and not out of Verizon's FCC tariff." CLEC Coalition Motion at 31-32. On its face, this request seems fine, as the Department, of course, has jurisdiction over only Verizon MA's state collocation tariff; the transition plan Verizon MA files in this proceeding accordingly will apply only to the cross connects ordered out of this tariff, not the FCC tariff. If that were the point of the CLEC Coalition's request, there would be no need for the Department to grant it simply because there clearly is no confusion on the point. In fact, however, the CLEC Coalition's request is designed to set up an argument the CLEC Coalition has made in other states: that cross connects ordered out of the state tariffs should be treated as "federal" cross connects ? and removed from the Department's jurisdiction ? simply because the CLEC's cage (or SCOPE or cageless arrangement) was ordered out of the federal tariff. This is nonsense. Putting cross connects ordered out of the Massachusetts state tariff inside an arrangement ordered out of the FCC tariff clearly does not mean that the Department no longer has jurisdiction over the rates, terms and conditions governing those cross connects. Indeed, voice grade cross connects, which the CLEC Coalition has tried

23/ That stranded investment includes, for example, the numerous POT Bay frames and terminations, distribution frame terminations and digital cross-connect bays (DSX bays), as well as the associated cabling required for each, purchased and installed by Verizon MA to serve the CLECs' inflated cross-connect requirements. In some extreme cases, Verizon MA was required to expand the main distributing frame or even the central office to accommodate the CLECs' overstated cross-connect requirements.

unsuccessfully to avoid paying for in other Verizon states, are *not even available* under the federal tariff. The Department should not cooperate in the CLEC Coalition's attempt to craft this argument, which would result in some voice grade cross connects not being subject to *any* rate, term or condition (or, for that matter, transition plan) because they are not governed by the *federal* tariff, but are within a cage ordered under that tariff. The CLEC Coalition's misleading and baseless request should be rejected.

B. The Department Correctly Rejected the CLEC Coalition's Claim that Power Charges Should Be Assessed Only When the CLEC Begins Using Power, Rather Than When Verizon MA Makes the Power Available to the CLEC.

Verizon MA's collocation tariff has always permitted Verizon MA to charge CLECs for DC power as soon as the power arrangement is turned over to the CLEC. *See* DTE MA No. 17, Part E, § 2.4.1.D. In this proceeding, the CLEC Coalition asks the Department to completely abandon this prior practice, arguing that these DC power charges should be assessed only when a CLEC actually begins using the power, not when power is made available to the CLEC. CLEC Coalition Motion at 39-43. The Department has already flatly rejected the CLEC Coalition's arguments, and should do so again. The CLEC Coalition's argument that the Department's "flawed" findings permit the relitigation of this issue, *see id*. at 39-40, does not even come close to meeting the standards for seeking reconsideration of the Department's findings. *See Phase 4-M Order* at 4-5.

The Department correctly found that power charges should be applied "as soon as [the collocation] arrangement is turned over to the CLEC," *Order* at 419, not when the CLEC independently elects to begin operations. As Verizon MA explained, Verizon MA provides all the necessary elements that the CLEC has requested on its application, including power, when the arrangement is turned over to the CLEC. *See* Verizon MA Brief at 263-264; Verizon MA Reply Brief at 229; *see also* Exh. VZ-29 at 48. Verizon MA should not be penalized if the

CLEC later decides to delay using this power. As the Department found, "[b]y recovering the Power Consumption charge once space is turned over, the cost structure will create an incentive for CLECs to be prudent in seeking to collocate, which will reduce the likelihood of Verizon incurring up-front investments that may go unused and unnecessarily exhausting CO space." *Order* at 420. The CLEC Coalition offers no new or cogent reasons for the Department to reverse this clear and unequivocal finding. *See* CLEC Coalition Motion at 42.

Finally, the CLEC Coalition's claim that Verizon MA's allegedly "oversized" power plant offers Verizon MA upfront cost savings that should be passed along to the CLECs, CLEC Coalition Motion at 41, misses the point. The Department has approved a *per unit cost* for DC power based on a properly sized power plant, including appropriate utilization levels. The CLEC Coalition's position is, therefore, nothing more than an attempt to relitigate this DC power charge, but the CLEC Coalition has offered nothing new on the subject and its request to reconsider this issue should therefore be denied.

C. The Department Properly Rejected the CLEC Coalition's Misguided Attempt To Compare Verizon MA's Collocation Costs with Rates Purportedly Charged by CLEC Hotels.

The CLEC Coalition also recycles its argument that the Department should compare Verizon MA's collocation building *costs* to "the *rates* charged by collocation hotels." CLEC Coalition Motion at 43 (emphasis added). The Department correctly found the CLEC Coalition's argument that "the rates charged by collocation hotels best represent the costs that would be found in a competitive market . . . [to be] unreasonable." *Order* at 386. The CLEC Coalition's claim that recent statements by Verizon to the FCC require the Department to reverse this finding, are without merit. *See* CLEC Coalition Motion at 45-46.

First, the CLEC Coalition presented no evidence in this proceeding of the actual *costs* of providing interconnection between CLECs. The Department is therefore unable to compare

Verizon MA's collocation costs with the costs of a CLEC hotel, even assuming the latter were relevant to this proceeding. Although the CLEC Coalition did attempt to present some information on the *rates* charged by one CLEC hotel, Universal Access, even this information is useless because it is incomplete and inaccurate. In fact, the CLEC Coalition failed to produce documentation supporting the rates it contends Universal Access charges, notwithstanding repeated Verizon MA requests for such information. *See* Exh. VZ-29 at 49-51.

In addition, although the CLEC Coalition claims that its witness, Mr. Morrison, "conduct[ed] an apples-to-apples comparison," CLEC Coalition Motion at 46, Mr. Morrison himself admitted that he presented only "a bottom-line figure that came from Universal Access for nonrecurring charges, and . . . a bottom-line figure that [he] was able to come up with from Verizon's nonrecurring-cost studies." Tr. 7 at 1254. He obtained his pricing information by merely providing the Universal Access representative some general parameters, without explaining Verizon MA's offerings and prices, and without obtaining a complete, side-by-side breakdown of prices for comparable services. Tr. 7 at 1253. According to Mr. Morrison, he "was not terribly interested in all of the components of those rates, because in the end the only thing as a collocator . . . I would be interested in would be the final number that I was going to write a check for." Tr. 7 at 1254-55. The CLEC Coalition has failed to demonstrate that its analysis includes all the relevant prices charged by Universal Access for interconnection services.

Nor is there any basis to assume that the rates presented by the CLEC Coalition, even assuming they are complete, reflect "market" rates or cover Universal Access's costs. Universal Access recently reported eight-figure quarterly burn rates and a *$72 million loss* in the second quarter of 2002,[24] demonstrating clearly that the prices it charges do not cover its costs.[25] Although Mr. Morrison claims that Universal Access's alleged rates compare with those of other collocation hotels, he made none of this comparative data available for review. *See* Exh. VZ-29 at 51-52.

Second, the Department correctly found the prices charged by collocation hotels were not "an adequate measure of competitive market prices for interconnection because the [collocation hotel] facilities are not reasonably comparable to Verizon's," lacking equivalent "[i]nfrastructure and ancillary equipment" and "access to local loop facilities." *Order* at 386. The CLEC Coalition's citation to Verizon MA's statements to the FCC in the triennial review proceeding, FCC Docket Nos. CC 02-33, 01-338, is nothing but a red herring. The question here is *not* whether a CLEC hotel provides a viable alternative to collocating within a Verizon MA central office, but rather whether the *costs* associated with providing collocation in these two entirely different locations are the same. The answer is plainly "no." As the Department correctly found, collocation in a Verizon MA central office requires different equipment and infrastructure. *Id.* In addition, among other things, a CLEC hotel, located in Class B office space, does not require the same, carefully monitored, environmental conditioning required in a Verizon MA central office. *Id.* And, of course, the CLEC in a collocation hotel is not connecting to Verizon MA, eliminating the need for cross connects, termination bays, and other equipment (and any associated conditioning). *See id.*

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[24] Rich Miller, *$72 Million Loss for Universal Access*, Carrier Hotels News, Aug. 8, 2002, *available at* http://www.carrierhotels.com/news/August2002/uaxs0809.shtml.

[25] It is not surprising, given current market conditions, that Universal Access is apparently offering bargain-basement prices to generate much-needed revenue. Boston's collocation hotel industry faces a real dearth of demand, and many collocation hotels have gone out of business. *See, e.g.*, Peter J. Howe, *Study: Boston's Telecom Space Glut is Biggest*, Boston Globe, Aug. 27, 2001 at C1 (noting that "Boston has one of the biggest gluts of 'telecom hotel' space of any U.S. market," and that owners were looking for other uses for these facilities).

Thus, the Department's finding that "[i]nfrastructure and ancillary equipment in collocation hotels, or Class B office space, have not been shown to be comparable to Verizon's COs," *id*., is absolutely correct, even if both locations provide the CLEC a method of accessing Verizon MA's UNEs. In fact, it is the CLEC Coalition, not Verizon MA, that has offered conflicting positions on this issue — arguing that a CLEC hotel is *not* a viable alternative to collocation in a Verizon MA central office, but nevertheless claiming that the costs to collocate in the two different locations are the same. *See* CLEC Coalition Motion at 47.

D. The CLEC Coalition's Brand New Proposal To Reduce Verizon MA's Administration and Engineering Charges Is Pulled Out of Thin Air.

Verizon MA's proposed Administration and Engineering charges are based on a well-documented study of the activities and associated time required to process and provision a collocation arrangement. The Department accepted Verizon MA's study as a starting point, and ordered a 20 percent reduction to account for future efficiencies and upward bias.[26/] *See Order* at 378-79. The CLEC Coalition does not challenge those adjustments; indeed, it "commends the Department" on them. CLEC Coalition Motion at 47.

Instead, the CLEC Coalition urges the Department to reduce these work times even further because "Verizon expends excessive time in processing collocation applications because of redundant application review and inefficient management of CO records." *Order* at 375; *see* CLEC Coalition Motion at 47-48. The Department, however, expressly rejected this argument, finding on the basis of the evidence Verizon MA presented that "the review process is markedly different for each group, with reviews of different documents and from a completely different standpoint with respect to job responsibility." *Order* at 376. The Department also correctly found that "[t]he CLEC Coalition's recommendation to charge CLECs the cost of maintaining

26/ Verizon MA strongly disagrees with this adjustment, but did not seek reconsideration on this issue.

CO records and apportion it according to CO square footage occupied is not a reasonable estimate of the costs Verizon will incur to process and implement collocation applications." *Id.*

The CLEC Coalition has offered no credible reason for the Department to reverse these findings. While the CLEC Coalition argues that reconsideration is appropriate because collocation hotels "do not charge exorbitant up-front fees such as Verizon's Application, Administration and Engineering fees, because they want to attract customers," CLEC Coalition Motion at 47, it presents no evidence on this point,[27/] much less evidence regarding a CLEC hotel's *costs* of processing a collocation arrangement. Nor, as we discuss above, has the CLEC Coalition demonstrated that a CLEC hotel performs the same activities as Verizon MA to process and provision a collocation application. Among other things, it is doubtful that a CLEC hotel performs the same careful surveys Verizon MA must perform to ensure that a collocator and its equipment do not interfere with the other, highly-sensitive, telecommunications equipment in a Verizon MA central office.

Finally, the CLEC's Coalition proposal to reduce Verizon MA's Administration and Engineering charges by 75 percent, made for the first time in its Motion, is completely unsupported by any record evidence or testimony and was apparently pulled out of thin air. In fact, the CLEC Coalition never even made a specific recommendation until now, arguing only that the "DTE should make the appropriate corrections to mitigate the shortcomings of Verizon's cost study." CLEC Coalition Brief at 204. The Department made the corrections it believed were appropriate to Verizon MA's cost studies; the CLEC Coalition's attempt to convince the Department to reduce these costs even further based on a completely arbitrary proposal should be rejected.

27/ For example, Verizon MA demonstrated that in fact "Universal Access and Verizon MA both charge the same $2500 up-front fee." Exh. VZ-29 at 55, 4-5.

CONCLUSION

For the foregoing reasons, the Department should deny the Motions for Reconsideration and Clarification filed by AT&T, WorldCom, the CLEC Coalition, and Z-Tel.

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